

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DRAGOS STANCU and CRISTINA GHINEA,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary of
Homeland Security; RUTH DOROCHOFF,
Chicago District Director of the United States
Citizenship & Immigration Service; EMILIO T.
GONZALEZ, Director of the United States
Citizenship & Immigration Service; MICHAEL
B. MUKASEY, Attorney General of the United
States;

Defendants.

Case No. FILED: JUNE 23, 2008
08 CV 3568

Civil Action JUDGE KENDALL
MAGISTRATE JUDGE KEYS

JH

COMPLAINT FOR WRIT OF MANDAMUS

NOW COME Plaintiffs, Dragos Stancu ("Stancu") and CRISTINA GHINEA ("Ghinea"),
by and through their attorneys, AZULAYSEIDEN LAW GROUP, and as for their Complaint for Writ
of Mandamus against Defendants state as follows:

NATURE OF COMPLAINT

1. In March 2006 Stancu, a Romanian citizen legally in the United States on a student visa, married a United States citizen, Ghinea. Ghinea then filed a valid Petition for Alien Relative ("Form I-130"), and Stancu concurrently filed a valid Application for Lawful Permanent Resident Status ("Form I-485"), both with the United States Citizenship & Immigration Services ("USCIS" or "the Service") in Chicago, Illinois. Defendants have failed to adjudicate either the Petition or the Application since 2006 despite repeated requests and to Plaintiffs' manifest

detriment. Plaintiffs bring this suit to compel Defendants to finally make a decision on the Application and Petition.

PARTIES

2. Plaintiff Stancu is a native and citizen of Romnia and validly entered the United States in January 2004 on a student visa. Stancu married Ghinea on or about March 23, 2006 in Cook County, Illinois. On or about March 28, 2006, Stancu filed Form I-485, which remains pending with USCIS in Chicago, Illinois.

3. Plaintiff Ghinea, a United States citizen, married Stancu on or about March 23, 2006 in Cook County, Illinois. On or about March 28, 2006 Ghinea filed Form I-130 on behalf of her husband, which remains pending with USCIS in Chicago, Illinois.

4. Defendant Michael Chertoff ("Chertoff") is the United States Secretary of Homeland Security and is the head of the Department of Homeland Security ("DHS"). He is sued in his official capacity. DHS is a Cabinet department of the United States federal government and is responsible for protecting the territory of the United States from terrorist attacks and responding to natural disasters. Chertoff is responsible for the adjudication of Plaintiffs' application pursuant to 8 USC §1225.

5. Defendant Ruth Dorochoff ("Dorochoff") is Chicago District Director of USCIS. She is sued in her official capacity. USCIS is a federal agency under the aegis of DHS and is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities, including, *inter alia*, adjudication of immigrant visa petitions; adjudication of naturalization petitions; adjudication of asylum and

refugee applications; adjudications performed at the service centers; and all other adjudications previously performed by the United States Immigration and Naturalization Service (“INS”).

6. Defendant Emilio T. Gonzalez (“Gonzalez”) is the Director of USCIS. He is sued in his official capacity.

7. Defendant Michael B. Mukasey (“Mukasey”) is the Attorney General of the United States and the head of the Department of Justice. He is sued in his official capacity. Mukasey is responsible for the adjudication of Plaintiffs’ application pursuant to 8 USC §1225.

JURISDICTION

8. This Court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 USC §1331; 28 USC §1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 USC §§2201-2202. Relief is requested pursuant to said statutes.

9. This action is brought to compel Defendants, who are officers of the United States, to perform their duties arising under the law of the United States.

10. This Court has jurisdiction to hear actions arising from claims that an agency or an officer or employee of a government agency failed to act in its official capacity and the person to whom the duty owed suffered a legal wrong. 5 USC §702.

11. This action further invokes Stancu’s and Ghinea’s right of due process under the Fifth Amendment of the United States Constitution, a claim that grants this Court jurisdiction. 28 USC §1331.

12. Moreover, federal courts maintain jurisdiction over adjudication matters when USCIS refuses to adjudicate their applications. *Iddir v. INS*, 166 F. Supp. 2d 1250, 1260 (N.D. Ill. 2001).

13. Furthermore, this Court maintains jurisdiction because Stancu and Ghinea seek to have his application and her petition adjudicated, which is among the duties conferred upon Defendants by Congress. *Id.* at 1256. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) does not divest this Court of jurisdiction because Stancu and Ghinea are not seeking a review of a denial; they merely seek to have his application and her petition adjudicated.

VENUE

14. Venue is proper in this Court pursuant to 28 USC §1391(e) in that this is an action against officers and agencies of the United States in their official capacities, brought in the district where Plaintiffs reside, and where a substantial part of the events or omissions giving rise to Stancu’s and Ghinea’s claim occurred.

15. Stancu’s and Ghinea’s Forms I-130 and I-485 were properly filed and, to Stancu’s and Ghinea’s knowledge, remain pending with the Chicago USCIS District Director.

EXHAUSTION OF REMEDIES

16. Stancu and Ghinea have exhausted all available administrative remedies. Stancu and Ghinea have made numerous inquiries concerning the status of their Application and Petition, and Defendants have failed to properly respond.

CAUSE OF ACTION

17. Stancu is a native and citizen of Romania, who entered the United States in January of 2004 on a valid student visa.

18. Stancu married a United States citizen, Ghinea, on or about March 23, 2006 in Cook County, Illinois.

19. On or about March 28 2006, Ghinea filed Form I-130 on behalf of her husband, and Stancu concurrently filed Form I-485, both of which remain pending with USCIS in Chicago, Illinois.

20. On or about March 31, 2006 USCIS issued a Receipt Notice for Plaintiffs' Form I-130. A true and correct copy of this document is attached hereto as **Exhibit A**.

21. On or about March 31, 2006 USCIS issued a Receipt Notice for Plaintiffs' Form I-485. A true and correct copy of this document is attached hereto as **Exhibit B**.

22. On or about July 19, 2006, Plaintiffs attended an interview with USCIS in Cook County, Illinois regarding Stancu's Form I-485.

23. On or about December 28, 2006, Stancu received a correspondence from USCIS regarding Stancu's recent inquiry into the status of his case; this correspondence indicated that Defendants were "actively processing this case[,]" that the case was "outside processing time[,]" and that Stancu should inquire again in six months. A true and correct copy of this document is attached hereto as **Exhibit C**.

24. On or about May 21, 2007 Plaintiffs attended a second interview with USCIS in Cook County, Illinois regarding Stancu's Form I-485.

25. Despite numerous inquiries, Defendants have failed to make a decision regarding either the Application or Petition.

26. Stancu and Ghinea have been greatly damaged by the failure of Defendants to act in accord with their duties under law. Stancu and Ghinea have a meritorious Application and Petition, which cannot be adjudicated because of Defendants' refusal to do so.

27. Defendants' delay in the processing of Stancu's Application and Ghinea's Petition has further deprived Stancu and Ghinea of their right to due process under the law as provided by the Fifth Amendment of the United States Constitution.

28. Defendants, in violation of the Administrative Procedure Act, 5 USC. §701, *et seq.*, are unlawfully withholding and unreasonably delaying action on Stancu's Application and Ghinea's Petition and have subsequently failed to carry out the adjudicative functions delegated to them by law with regard to Stancu's case.

29. Stancu has made numerous status inquiries in the attempt to secure adjudication of his Application and Ghinea's Petition, all to no avail. Accordingly, Stancu and Ghinea have been forced to pursue the instant action.

REQUEST FOR RELIEF

WHEREFORE, Stancu and Ghinea request that this Honorable Court enter an order:

- (a) Requiring Defendants to adjudicate Stancu's Application for Lawful Permanent Resident Status (Form I-485) and Ghinea's Petition for Alien Relative (Form I-130);
- (b) Awarding Stancu and Ghinea reasonable attorney's fees pursuant to 28 USC §2412 for failure of Defendants to perform their duties within a reasonable amount of time; and
- (c) Granting such other relief at law and in equity as justice may so require.

Respectfully submitted,

s/Roland Lara

Roland Lara

AZULAYSEIDEN LAW GROUP

Counsel for Plaintiffs

205 North Michigan Avenue, 40th Floor

Chicago, Illinois 60601

312.832.9200

Exhibit A



Receipt Number: MSC-06-180-12584		Case Type: I-130 - Petition for Alien Relative	
Received Date: March 28, 2006	Priority Date:	Petitioner: A047606880 GHINEA, CRISTINA	
Notice Date: March 31, 2006	Page 1 OF 1	Beneficiary: A096540906 STANCU, DRAGOS	

CRISTINA GHINEA 1926 PRAIRIE SQ APT 324 SCHAUMBURG IL 60173	Notice Type: Receipt Notice Amount Received: \$190.00
---	--

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. Box 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283



Exhibit B



Receipt Number: MSC-06-180-12582		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: March 28, 2006	Priority Date:	Applicant: A096540906 STANCU, DRAGOS
Notice Date: March 31, 2006	Page 1 OF 1	ASC Code: 3

DRAGOS STANCU 1926 PRAIRIE SQ APT 324 SCHAUMBURG IL 60173	Notice Type: Receipt Notice Amount Received: \$395.00
---	--

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

BIOMETRICS-

The next step is to have your biometrics taken, if required, at a US Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at www.USCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services
P.O. Box 648005
Lee's Summit, MO 64064
National Customer Service Center: 1-800-375-5283



Exhibit C

U.S. Department of Homeland Security
USCIS
101 West Congress Parkway
Chicago, IL 60605



**U.S. Citizenship
and Immigration
Services**

Thursday, December 28, 2006

DRAGOS STANCU
1926 PRAIRIE SQUARE APT. 324
SCHAUMBURG IL 60173

Dear DRAGOS STANCU:

On 12/19/2006 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	The applicant
Attorney Name:	Information not available
Case type:	I485
Filing date:	Information not available
Receipt #:	MSC-06-180-12582
Beneficiary (if you filed for someone else):	STANCU, DRAGOS
Your USCIS Account Number (A-number):	A096540906
Type of service requested:	Case Status - Outside Processing Time Change of Address

The status of this service request is:

Based on your request we researched the status of this case. We are actively processing this case. However, we have to perform additional review on this case and this has caused a longer processing time. If you do not receive a decision or other notice of action from us within 6 months of this letter, please call customer service at the number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

One final note: When you called you or your representative asked that we update your address on your pending case for the purpose of processing. We have updated your address. Your address now appears on your application or petition as the address shown above.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services